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November 13, 2009

REPORT TO THE RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS
COMMITTEE

AMENDMENTS TO DISCLOSURE ORDINANCE

On November 18, 2009, the Rules Committee will consider revisions to the Disclosure Ordinance, as codified in the Municipal Code. The proposed revisions incorporate recommendations contained in the Second Annual Report of the Independent Consultant, received by the City on April 24, 2009, as well as additional revisions proposed by the Disclosure Practices Working Group ("DPWG").

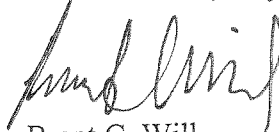
The revisions recommended by the Independent Consultant are primarily concerned with the relationship between DPWG and both the City Council and the Audit Committee, particularly with respect to providing those entities with greater confidence in those aspects of the City's disclosure practices and procedures undertaken by DPWG. The proposed revisions will allow representatives of both the City Council and the Audit Committee to attend and observe DPWG meetings.

The revisions proposed by DPWG are primarily concerned with the efficient functioning of DPWG. In particular, the revisions provide for both the Chief Financial Officer and the City Attorney to designate appropriate subordinates to attend and participate in meetings of the DPWG. The revisions also eliminate overlapping positions in the City Attorney's office with respect to advising the City Council and the Audit Committee on securities law matters.

Sincerely yours,

JAN I. GOLDSMITH, City Attorney

By



Brant C. Will
Deputy City Attorney

BCW:jdf
RC-2009-29

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY AMENDING CHAPTER 2, ARTICLE 2, DIVISION 3, TITLED "CITY ATTORNEY" BY AMENDING SECTION 22.0302 AND REPEALING SECTIONS 22.0303 AND 22.0304; AND AMENDING CHAPTER 2, ARTICLE 2, DIVISION 41, TITLED "SECURITIES DISCLOSURE" BY AMENDING SECTIONS 22.4101, 22.4103, 22.4104, 22.4105, 22.4106, 22.4107, 22.4108, 22.4109 AND RENUMBERING SECTION 22.4110 TO 22.4111, ALL RELATED TO THE CITY'S SECURITIES DISCLOSURE PROCEDURES.

Article 2: Administrative Code

Division 3: City Attorney

§ 22.0302 Deputy City Attorney for Finance and Disclosure

(a) To assist in carrying out the responsibilities of the City Attorney under Chapter 2, Article 2, Division 41, the City Attorney shall designate a Deputy City Attorney for Finance and Disclosure who is knowledgeable about federal and state securities laws relating to municipal finance. ~~to supervise those Deputy City Attorneys of the Office of the City Attorney who are responsible for matters relating to City financings and disclosure; assist~~ The Deputy City Attorney for Finance and Disclosure shall be responsible for: assisting the City Attorney in carrying out the City Attorney's duties to on the Disclosure Practices Working Group; and to assist in the undertaking and coordination coordinating of such due diligence as is necessary in preparation for the issuance of the opinion of the City Attorney in connection with City financings; advising and assisting the City Council in connection with matters related to financings and disclosure matters.

including requirements under federal and state securities laws; and providing any necessary and appropriate advice to the Audit Committee.

~~(b) — The Deputy City Attorneys designated pursuant to section 22.0303 and 22.0304 shall not be designated as the Deputy City Attorney for Finance and Disclosure pursuant to this section~~

~~§ 22.0303 — Disclosure Advisor to the City Council~~

~~(a) — City Attorney shall designate one or more Deputy City Attorneys to advise and assist the City Council in connection with matters related to financings, disclosures, and other matters, including advising and assisting the members of the City Council in meeting requirements under federal and state securities laws.~~

~~(b) — The Deputy City Attorneys designated pursuant to sections 22.0302 and 22.0304 shall not be designated to advise and assist the City Council pursuant to this section.~~

(Added 10-11-2004 by O-19320 N.S.)

~~§ 22.0304 — Legal Advisor to the Audit Committee~~

~~(a) — The City Attorney shall designate one or more Deputy City Attorneys as legal advisors to the Audit Committee to provide any necessary and appropriate advice to that Board.~~

~~(b) — The Deputy City Attorneys designated pursuant to sections 22.0302 and 22.0303 shall not be designated as legal advisors to the Audit Committee pursuant to this section.~~

Article 2: Administrative Code

Division 41: Securities Disclosure
(Added 10-11-2004 by O-19320 N.S.)

§ 22.4101 Disclosure Practices Working Group Purpose and Intent

(a) ~~The City hereby establishes a Disclosure Practices Working Group, consisting solely of City Officials with the assistance and advice of the City's disclosure counsel, which shall have the~~ administrative responsibilities set forth in this Division, in furtherance of the mandates of section 32.1 of the City Charter, to ensure the compliance by the City (including the City Council, City officers, and staff) with federal and state securities laws and to promote the highest standards of accuracy in disclosures ~~provided by the city relating to securities issued by the City relating to securities issued by the City or by its related entities~~ related entities. It is the intent of the City Council that the Disclosure Practices Working Group be an internal working group of City staff and not a decision-making or advisory body subject to the provisions of the California Ralph M. Brown Act.

- (b) The Disclosure Practices Working Group shall:
- (1) design and implement the City's disclosure controls and procedures;
 - (2) ~~review the City's disclosures in connection with its securities and those of its related entities;~~ review those disclosures by the City or

its related entities reasonably likely to reach investors or the securities markets;

- (3) ensure the City's compliance with federal and state securities laws;
- (4) ensure that City staff receive appropriate training regarding such controls and procedures, including training regarding the requirements of federal and state securities laws;
- (5) on an annual basis, critically review and evaluate the City's disclosure controls and procedures, and compliance therewith ~~on an annual basis~~;
- (6) make such recommendations as it shall see fit regarding such disclosure controls and procedures and related matters to the ~~Mayor~~ City Manager, and the City Council; and
- (7) ensure that the City Council, City officers, and staff comply with federal and state securities laws in connection with disclosures provided by the City relating to securities issued by the City and securities issued by *related entities*.

§ 22.4103 Organization of the Disclosure Practices Working Group

- (a) The Disclosure Practices Working Group shall consist of the following ~~or, from time to time, their respective designees (as permitted by the Disclosure Controls and Procedures)~~:

- (1) the Chief Operating Officer or designee;
- (2) ~~the Chief Financial Officer~~ the City Attorney or designee;
- (3) ~~the City Director of Debt Management~~ the Chief Financial Officer;
- (4) ~~the City Attorney~~ the Director of Debt Management;
- (5) the Deputy City Attorney for Finance and Disclosure, who shall serve as Disclosure Coordinator of the Disclosure Practices Working Group, with responsibility for its operation, including arranging meetings, maintaining the agenda and arranging for information to be provided to members and participants; and
- (6) the City's outside disclosure counsel, ~~who shall be a non-voting member; and,~~
- (7) ~~the City auditor (or other person designated to fulfill that responsibility); who shall be a non-voting member.~~

- (b) Designees shall have appropriate experience and knowledge of City disclosure issues.
- (c) ~~(b)~~ The Independent Budget Analyst ~~or, from time to time, that official's designee, shall be an ex-officio participant and the City Auditor,~~ or their respective designees, may attend and participate in meetings of the Disclosure Practices Working Group.

§ 22.4104 Confidentiality of Draft Disclosure Documents

- (a) All draft disclosure documents submitted to the Disclosure Practices Working Group will remain the property of the originating department and shall remain confidential until such document is approved by the Disclosure Practices Working Group and publicly released.
- (b) Members and participants of, or representatives to, the Disclosure Practices Working Group may not transmit draft disclosure documents to third parties without the express written permission of the originating department, which shall be granted only after consultation with the City Attorney's office.

§ 22.4104-22.4105 Meetings

- (a) The Disclosure Practices Working Group shall meet as often as necessary to fulfill its obligations under this section, but not less than once a month. Any member of the Disclosure Practices Working Group may convene a meeting. Members may participate in meetings by telephone.
- (b) Any member or ~~ex-officio~~ participant may place an item on the agenda of the Disclosure Practices Working Group.
- (c) Each member or ~~and ex-officio~~ participant of the Disclosure Practices Working Group who is a City official may invite such other personnel in his or her department or office to participate from time to time in meetings

as he or she deems necessary for the effective operation of the Disclosure Practices Working Group.

- (d) The Audit Committee may appoint a representative to attend and observe meetings of the Disclosure Practices Working Group at which the audited financial statements of the City or its *related entities* are considered by the Disclosure Practices Working Group.
- (e) In order to enhance the ability of the City Council to rely on the processes of the Disclosure Practices Working Group, representatives of individual Council offices may attend and observe meetings of the Disclosure Practices Working Group, provided that no meeting of the Disclosure Practices Working Group may be attended by a majority of City Councilmembers or by staff representing a majority of Council offices or any combination of Councilmembers or staff members that would represent a majority of Council offices.
- (f) Upon attendance at any meeting of the Disclosure Practices Working Group, Audit Committee representatives and Council office attendees shall be provided with draft disclosure documents only for review during such meetings.

§ ~~22.4105-22.4106~~ **Design and Implementation of Disclosure Controls and Procedures**

- (a) The Disclosure Practices Working Group shall from time to time review the City's disclosure practices and procedures and shall recommend to the

~~Mayor~~ City Manager and the City Council such new disclosure controls and procedures as ~~shall~~ may be necessary or advisable to ensure the accuracy of the City's disclosures and the City's compliance with all applicable federal and state securities laws. Such disclosure controls and procedures shall be in writing and designed to ensure:

- (1) that information material to the City's proposed and outstanding securities is compiled and communicated to senior City officials, including the ~~Mayor~~ City Manager, Chief Operating Officer, Chief Financial Officer, City Attorney, and the City Council, as appropriate, to allow timely decisions regarding disclosure;
- (2) that such information is prepared in a timely manner to enable such senior City officials to certify the accuracy of disclosures made in connection with City financings;
- (3) compliance with all applicable federal and state securities laws, including ensuring the disclosure of all material information with respect to the City's proposed and outstanding securities; and,
- (4) the preservation of an audit trail regarding information prepared and reviewed in connection with such disclosures.

- (b) Such disclosure controls and procedures shall address the accurate and timely disclosure of information ~~provided by the City~~ in connection with securities issued by the City and by the *related entities*, ~~and shall include~~

~~these procedures established by the Audit Committee for employees and officials to submit complaints or concerns to the Audit Committee confidentially and anonymously.~~

- (c) The ~~Mayor~~ City Manager shall implement the recommendations of the Disclosure Practices Working Group relating to disclosure controls and procedures ~~together with any recommendations of the Audit Committee,~~ as soon as practicable, or shall within 45 days of receiving such recommendations provide the City Council with a report as to why such recommendations should not be implemented. The City Council shall review such report of the ~~Mayor~~ City Manager to determine whether such report of the ~~Mayor~~ City Manager is reasonable and carries out the program of this Division.

§ ~~22.4106~~ 22.4107 **Annual Evaluation and Report**

- (a) Each year, the Disclosure Practices Working Group shall conduct an annual evaluation of the City's disclosure controls and procedures. In the course of that review, representatives of the Disclosure Practices Working Group shall, as appropriate:
- (1) meet with key managers and staff of the ~~Mayor~~ City Manager's Office (particularly those managers and key staff responsible for the financial management of the City), the Chief Financial Officer's Office, and other relevant offices and departments to discuss the elements of the City's disclosure materials for which

they are responsible and to evaluate the effectiveness of the disclosure controls and procedures;

- (2) meet with the City's independent auditors and disclosure counsel to review the design and operation of the disclosure controls and procedures; and
- (3) submit a written Annual Report on the Group's work and findings to the City Council ~~and to the Audit Committee~~ on or before December 15 of each year.

(b) The ~~Mayor~~ City Manager and the ~~City Auditor~~ Chief Financial Officer shall:

- (1) review the Annual Report required by subsection (a)(3);
- (2) certify in writing within 14 calendar days of the issuance of the Annual Report to the City Council that they have reviewed the report; and,
- (3) provide to the City Council any recommendations or dissenting opinions that they may have with regard to the content of the Annual Report.

§ ~~22.4107~~ 22.4108 **Timely Preparation and Review of Disclosure Documents**

- (a) The Disclosure Practices Working Group shall be responsible for the following:

- (1) reviewing the form and content of all of the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to its securities, including without limitation, private placement memoranda, preliminary and final official statements and any supplements thereto, Comprehensive Annual Financial Reports, Annual Reports, and other filings made with ~~Nationally Recognized~~ the Municipal Securities Information Repositories, ~~press releases~~ Rulemaking Board, rating agency presentations, web-site postings, and other communications reasonably likely to reach investors or the securities markets; and,
- (2) providing for the timely review of all disclosure materials requiring approval and certification by the ~~Mayor~~ City Manager, Chief Financial Officer and City Attorney.

- (b) The Disclosure Practices Working Group also shall be responsible for reviewing disclosures provided by the City in connection with securities issued by the *related entities*, together with all of such documents and materials prepared, issued, or distributed in connection with such securities, to the extent that the City, the City Council, or City officers, or staff are responsible for the form or content of such documents or materials. As appropriate, the Disclosure Practices Working Group shall provide for the timely review of all such disclosure materials requiring

approval and certification by the ~~Mayer~~ City Manager, Chief Financial Officer and City Attorney.

- (c) The Disclosure Practices Working Group also shall be responsible for reviewing the audited financial statements of *related entities* if those audited financial statements will be appended to preliminary and final official statements or included in filings with the Municipal Securities Rulemaking Board.

§ ~~22.4108~~ 22.4109 Promote Compliance with Securities Laws

- (a) The Disclosure Practices Working Group shall promote the City's compliance with the federal and state securities laws relating to disclosure provided by the City in connection with the City's securities and those of its *related entities* and may make recommendations to the ~~Mayer~~ City Manager and the City Council regarding appropriate means for furthering such compliance by the City or the *related entities*.
- (b) ~~Members of the Disclosure Practices Working Group shall meet periodically as needed with the Audit Committee, but not less than once annually.~~

§ ~~22.4109~~ 22.4110 Training for City Employees

- (a) The Disclosure Practices Working Group shall be responsible for arranging for mandatory training, on a regular basis, for City staff, officials, City Councilmembers, and the ~~Mayer~~ City Manager regarding their obligations relating to disclosure matters under federal and state

securities laws, and in this connection shall work with the Independent Budget Analyst regarding training of Councilmembers.

- (b) The ~~Mayor~~ City Manager, the Chief Financial Officer, and the City Attorney shall ensure the attendance at such training of those persons for whom the Disclosure Practices Working Group recommends such training.

~~Such training shall include information on how to submit complaints or concerns to the Audit Committee in a confidential and anonymous manner.~~

§ ~~22.4110~~ 22.4111 Requests of the Disclosure Practices Working Group

[No change in text]

§ ~~22.4111~~ 22.4112 Certifications by City Officials to the City Council

- (a) In connection with the approval of offering documents for securities by the City Council, the ~~Mayor~~ City Manager and the City Attorney each shall certify in writing to the City Council that to the best of his or her knowledge, such documents do not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. In the event that the ~~Mayor~~ City Manager or the City Attorney is medically incapacitated or physically absent from the jurisdiction, a deputy or other authorized designee of such officer may make the certification required by this section.

- (b) Upon the issuance of the City's Comprehensive Annual Financial Report [CAFR] and in connection with the incorporation of all or portions of the Comprehensive Annual Financial Report [CAFR] in the disclosure documents of the City or the *related entities*, the Chief Financial Officer shall make the certifications to the City Council required by Chapter 2, Article 2, Division 7 of the San Diego Municipal Code.

~~§22.4112 — Selection of Independent Auditors~~

~~In preparation for the issuance of a Request for Proposals for an independent auditor for the City, the Mayor and the Audit Committee shall consult with the Disclosure Practices Working Group regarding its recommendations relating to appropriate expertise, experience, responsibility, and other factors on which candidates will be evaluated by the Audit Committee.~~

BCW:jdf
10/22/2009
Or.Dept:City Attorney
O-2010-42